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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/735,982

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David A. Grabelsky

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EXAMINER

HYUN, SOON D

ART UNIT

PAPER NUMBER

2616

MAIL DATE

DELIVERY MODE

08/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/735,982	Applicant(s) GRABELSKY ET AL.	
	Examiner Soon D. Hyun	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-10 and 17-22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,678,250 in view of Kalavade et al (U.S. Patent Number 5,961,599).

Re Claims 1-10 and 17-22, claim 1 of U.S. Patent No. 6,678,250 teaches a first gateway and a second gateway device for transmitting a sequence of packets whereby a network delivery packet performance data is monitored.

However, Claim 1 of U.S. Patent No. 6,678,250 fails to explicitly teach a control protocol process for collecting and storing of the packet delivery performance statistics to the gateway pair. Kalavade et al (Kalavade) teaches in fig. 1 (See col. 2, lines 36-46)

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a pair of the terminals (gateways) that performs statistic gathering of the performance reports in accordance to RTP/RTCP (a control process protocol). One skilled in the art would have been motivated by Kalavade in perform statistic gathering of performance data into a database to adapt to the network condition and to maintain terminal QoS.

3. Claim 16 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,678,250. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of U.S. Patent Number 6,678,250 encompasses the limitations of claim 16 of instant application.

Moreover, omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art. It is well settled that the omission of an element and its functions is an obvious expedient if the remaining elements performs the same function as before. *In re Karlson*, 163 USPQ 184 (CCPA 1963). Also note *Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims 1-4, 7-10, and 16-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Kalavade et al (U.S. Patent Number 5,961,599).

Re Claims 1 and 16, Kalavade et al (fig. 1) teaches terminal 20a (a first gateway device); terminal 20b (a second gateway device) in communication with 20a by transmitting packet (a sequence of data packets); 20b (the second gateway) that performs statistic gathering of the performance reports between the terminals (gateway pair) in accordance to RTP/RTCP (a control process protocol) for monitoring the end-to-end QoS and stored in database (See col. 2, lines 36-46).

Re Claim 2, refer to Claim 1, wherein the fig. 5 displays the compiling of the RTCP reports between the terminals in a graph.

Re Claims 3, 4, and 17, refer to Claim 1, RTP/RTCP.

Re Claims 7-10 and 18-22, refer to Claim 1, wherein the QoS parameters include jitter, packet loss, RTD in the statistic database to actuate alarm thresholds.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalavade et al (U.S. Patent Number 5,961,599) in view of Umetsu (U.S. Patent Number 5,751,963).

Re Claims 5 and 6, Kalavade et al (Kalavade) teaches only a pair of terminals (a plurality of gateway) for generating RTCP reports (network performance data), see fig. 1. It is apparent to one skilled that any number of terminals can be interconnected over the hierarchical network of Internet to support RTP applications.

However, Kalavade fails to explicitly teach, "gateways are organized to a hierarchical network organization structure to facilitate...performance data." Umetsu teaches a hierarchical network management system for managing the performance data for the network (See abstract). In particular, Umetsu (fig. 1) teaches a management device for monitoring devices in the hierarchical network (See col. 4, lines 45 +). This feature can be implemented into the network of Kalavade to manage a number of terminals in the hierarchical Internet. In so doing, duplicate inquiry handling between the terminals can be prevented. Therefore, it would have been obvious to one ordinary skilled to combine the references.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi.H. Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



S. Hyun
8/20/2007



CHI PHAM
SUPERVISORY PATENT EXAMINER 8/21/07